

THE PROSPECTOR AND THE MINING LAW

Agitation For Revision of Law is Being Revived in Certain Quarters

(By T. F. Van Wagenen.)

As the agitation for a revision of the mining law is being revived in certain quarters, it may not be amiss to examine the subject from a point of view somewhat different from that usually taken by the mining engineer or investor, and yet one which perhaps is worthy of very careful consideration.

The two principal ends to be secured by a mining law may be stated as follows: (1) to induce exploration and discovery by the prospector, so that the mineral resources of the country may become known; and (2) to give such reasonable legal security in the matter of titles as will encourage the investment of capital in the business of mining. As mines cannot be worked until they are discovered, it is plain that the occupation of the prospector is a fundamental one. Affairs must be so arranged that there are inducements for him to go out into the field and explore. What must these inducements be? I list them as follows:

1. He must be able to acquire title to a discovery at a very small cash outlay, for he is generally a man of small means.
2. The method of initiating title must be extremely simple, for he rarely possesses business habits or clerical ability.
3. His claim, when staked, must possess merits merely as a surface area, in addition to those it may be found to have later on as a mine, to attract a buyer, for the real prospector is only a finder and seller, and never a developer.

Consider the nature of the occupation of prospecting. It must not be confused with that of the claim locator or miner. The prospector is a pioneer pure and simple, a natural wanderer over the face of the earth, a genial and valuable variety of the genus tramp and hobo. Not one in a thousand of the class has any reserve funds, possess more than the rudiments of an education in the ordinary sense of the word, or habits of thrift. They could not follow the business if the conditions were otherwise, for it is one requiring a temperament at once careless of the future, and yet highly optimistic. Men of such characteristics are the only ones who will go out into the hills on long tramps, and examine them minutely for indications of mineral wealth. Nearly all known mines have been found by them or by accident. Can an instance be cited of a discovery by a mining engineer or geologist, or by a business man of any kind? How absurd then it is to penalize the absolutely necessary occupation of the prospector by requiring him to take out a license before starting on his summer tour of exploration, as is done in all countries except Spanish America and the United States, or to make the process of location one requiring anything but the simplest acts.

Again, remembering that the sole ambition of the prospector is to sell his claim on its undeveloped merits, how necessary it is that this claim should possess speculative attraction in itself, in addition to the lure of a promising outcrop. This special feature is provided by the theory of extralateral rights; which, coupled with free prospecting privileges, and extremely simple processes of initiating title, are the distinctive features of the American mining law, a law which has caused those parts of the continent where it is in force to become, in a half century, the best explored and the most broadly active mining region on the globe.

Enacted by Congress more by accident than by foresight, yet an everlasting credit to the sterling common sense of the man most concerned in its adoption (W. M. Stewart, senator from Nevada), it embodies the three principles that are absolutely necessary for the establishment and maintenance of this class of prospectors. In fact, the prospector did not exist until this law came into being. The very name of the occupation is American, and cannot be found in any dictionary of the English language published prior to the year 1850. The prospector himself, as we know him, is not found outside of the region where that law is in force. There can be no reasonable warrant therefore for the abrogation of its peculiar features until it is clearly evident that the coun-

try has been thoroughly explored, and all its mineral resources discovered. Of course no one will consider this condition to have yet been reached.

The value to the prospector of extralateral rights is simply this. Having made a discovery of an outcrop more or less promising as the case may be, and covered it to the best of his ability with one claim, the title to which he has acquired at very low cash cost, and by processes within the ability of even a total illiterate, he has something that he can sell, to provide the means to continue his work. Why? Because, if the outcrop is well marked, the buyer acquires in the act of transfer the right to follow it downward indefinitely, i. e. matter where it goes. The seller is not compelled to locate one or more adjoining claims at large additional cost to himself (and with faked discovery shafts) to protect his dip. All he needs to cover is the outcrop, and if the buyer is not satisfied that this has been properly done, there is nothing to prevent him from making as many more locations as he thinks wise. All this is very obvious when the subject is considered from the prospector's point of view. That the position taken is a correct one seems to me to be confirmed by examining the history of mining districts the world over. In the western United States and Alaska, where the American law applies, there are thousands of prospectors in the field continuously moving southward or into the lowlands in the fall and winter, and northward or into the highlands in the spring and summer.

But when the international boundaries are reached in either direction, where the American law gives place to that of Mexican or Canadian, they stop, as if at a dead line. I have wandered through the former country for the better part of five years, from the Rio Grande to the Isthmus of Tehuantepec, and have never yet seen or heard of an individual of the class. British America may be searched from Labrador to the Pacific with little better results. There was a time when the province of British Columbia had an apex law, and while it was in force the rugged region hummed with explorers. When it was repealed they faded away like snow before a chinook. In Alaska, buried in snow and ice during nine months of the year, the prospector is in evidence everywhere. Across the boundary in the Yukon Territory of the Dominion, under even more favorable climatic conditions, he is conspicuously absent. Consider the effect of the line that separates New Mexico from Texas. West of it the American law prevails and explorers are abundant. East of it the Texas state law governs, with square locations and no extralateral rights, and though there are numerous well known and promising mineral areas which were discovered before the exact position of this line was known, yet you will be unable to find a prospector in the field. In fact the situation in this respect is so discouraging in the Lone Star state that its legislature has had under consideration for several sessions the payment of bonuses for new discoveries, and the offer of other inducements to attract the class of men it needs to search over its vast unoccupied and unproductive areas.

Take the case of Africa, a continent rich in minerals, as proved by the innumerable ancient workings existing. When Egypt was in its prime great quantities of gold came from the Abyssinian highlands and the Rhodesian plateau. In the days of the Carthaginians and Romans the Atlas mountain chain was the source of much silver and lead. Anterior perhaps to both of these the great mineral field on the Congo Zambesi divide was known and worked by the natives. Yet in all this vast region, from the Mediterranean to the Cape, much of which is now far more accessible than was our own West in the days of 1850-60, not a prospector exists, and none have existed in modern times except in the province of Rhodesia. Here, because it was thrown open as a mineral field under regulations suggested by an American engineer, and with a law conferring extralateral rights, a number of American prospectors of the better class migrated when the country was

opened. But they found themselves on arrival confronted with restrictions in exploring, and regulations for initiating and maintaining title so burdensome, complex, and costly that in a few years all disappeared.

Consider the situation in Scandinavia, Siberia, Spain, Asia Minor, Italy, and Greece, all regions known to be rich in mineral resources, because of discoveries made by accident centuries ago when prospecting was free. All these lands have elaborate mining laws of the old-fashioned kind, yet one never hears of a new discovery, for prospectors are unknown. The laws do not provide for them. In Australia, on the other hand, the laws offer extraordinary inducements in the way of bonuses and governmental assistance to explorers, yet are without the extralateral rights feature. As a consequence, little more than the fringes of the continent have been looked over, and the type of prospector developed there is one totally different from the vigorous and independent individual known to us.

The conditions in Spanish America are equally to the point. When those lands were first occupied by Europeans, prospecting was free (as indeed it remains today), and practically no laws existed governing the initiation and maintenance of mining titles, beyond the grant of vast concessions to explore, to favored individuals, who passed on these rights intact to their subordinates and followers. And no burdens were laid upon the industry beyond royalties on gross production. Under this system the tropical and semi-tropical portions of the two continents were overrun by searchers for the metals, with results that were enormously to the advantage of the whole commercial world of the day. Later, as political states were organized, Old World mining laws were placed upon the statute books, and immediately the prospector disappeared and the mining industry began to languish. Today, not a mineral explorer can be found in the field, and if we look to the history of the many wonderful mining districts that are known to exist in these territories, we find that nearly all the mines in operation are antiques, and that almost no new discoveries have been made in modern times except in northern Mexico, into which, for a few seasons can prospector ventured and remained until driven away by the complexity of the laws and the costs of maintaining the titles to the discoveries he made.

To come down from continents to localities, consider the instances of Zacatecas, a Mexican mining district first opened about the year 1540. Here there has been a recorded output in ounces of silver nearly double that of either Leadville or the Comstock to date, yet only a beginning has been made in uncovering its wealth. If the group of hills in which it lies could be picked up bodily and dropped in any one of our mountain states so as to open to the prospector under the provision of our Federal law, a stampede would ensue for the new locality that would recall the early days of Butte, Leadville, the Coeur d'Alene, Cripple Creek, Tonopah, and a host of other famous American mining camps. Within a few weeks thereafter hundreds of little prospect dumps would begin to blossom out on its hill-sides, and within a few months dozens of new shafts would be started.

But being where it is, it is one of the dearest of known mineral regions. The very nature of the trade of the prospector is unknown to its citizens, and no work is in progress anywhere except upon half-gutted antiquas. Of course some allowance must be made for the difference between Mexicans and Anglo-Saxons, but this will not explain the difference in results. However, the true causes of the universal stagnation becomes clear as soon as one comes into actual relation with the Mexican mining law. There are those, it is true, who claim it to be the best yet devised. It surely has good points for the capitalist, and for the company that can keep the parish priest and the jefe politico on the pay-roll, but not, I maintain, for the prospector and the country itself.

As for the second object to be accomplished in the construction of a mining law, while our code is far from being all that it might be, I have no sympathy with those who are clamoring for the abrogation of the extralateral rights feature under the plea of securing better protection to purchasers and investors. Let the latter, in this matter, protest themselves or take the consequences of their own neglect or carelessness. That is the American way, and in this case the only right way. Who buys a piece of city or agricultural land without calling for an abstract of title and having it examined by a specialist in such documents? But, mines are purchased daily without this simple precaution, and when trouble ensues the industry and the law are blamed when really the fault lies with the hasty or too enthusiastic buyer. Moreover, no investor should accept title to a mining claim without having its surface aspects as well as its underground condition passed upon by a competent mining engineer. If he reports that the apex of the deposit is not safely included within the boundaries as shown by the documents, what more easy to call on the vendor to file an amended location certificate, or locate additional ground along the side-line? Or for the buyer to perform these acts himself? Or, if the adjoining ground is already occupied and such precautions are impossible, the claim is plainly defective and must be frankly accepted as such or left alone. Plenty of real estate of the ordinary kind bears the label caveat emptor among conveyancers, yet no one blames the land laws for the fact.

Beyond question, the apex law has in the past caused much aggravating and expensive litigation. But practically all legal questions that can arise under it have by this time been settled by decisions of our highest courts, and nothing but questions of fact remain to give further trouble. These belong properly to the domain of the engineer, who should be adequately prepared to advise his client by having passed a rigid examination in mining jurisprudence at the institution where his degree was obtained. There is room for improvement in this branch of study in the curricula of all our mining schools. Much has been written of late as to the large amount of mineral land held under possessory or patent title which is said to be unused by the owners and unobtainable by others who would be glad to develop and operate. So far as my experience

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